



PLEA BARGAINING- AN INNOVATIVE STEP FOR INDIAN LEGAL SYSTEM

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First of all I would like to tell a very famous story, which reflects the passion of justice in Indian justice system. We all have must heard the name the Mughal emperor **Jahangir**. He was known for his justice by everyone. He was very passionate about justice. His noble justice earned fame in history. This story is that, one day Jahangir's beloved queen Noorjahan targeted a deer into the king's palace apartment known as "Aahukhana". Unfortunately the arrow hit a washer man, it was an unintentional act that the washer man received arrow stroke and died. The wife of the washer man rang the metallic bell of justice. Jahangir immediately responded to the cry for justice and called the "Fariyadi" to hear his complaint, he summoned the queen from the royal pavilion to the justice-hall as an ordinary accuse. After hearing he pronounced judgment as per law of equality-life for life. All the courtiers sitting in the justice hall perplexed. Even the Washer man's wife looked in disbelief that Jahangir would sacrifice his most beloved for the justice. They begged for the life of the queen. Even the washer man's wife craved for mercy. In order to meet the strict claims of justice he stood firm on his judgment until he was convinced by the jury-courtiers that there is concession in the "quranic" law that if the aggrieved party agrees, the strict claim of justice may be meted out with "Plea bargaining". The victim's wife happily agreed to it and the queen was relieved of the punishment after paying the bargained amount to the full satisfaction of the aggrieved.

Further our Dharmashastras and smritees propounded plea bargaining as a means of self purification by reducing or removing the effects of sin of committing offence. Forgiveness on repentance similar to the principal of Plea bargaining is imbedded in our culture, tradition, religion from ages.¹

There are some other historical evidences regarding imposition of punishment. For example:-

¹ Eqbal Justice M.Y., 'Concept of plea bargaining', Nyaydeep January 2008 p. 51

- (i) In AD 1225 a man was hunting at night. He missed his aim and shot a human being. It was decided that the accused should give 32 cows to a temple.
- (ii) During the reign of vikram chola (**AD 1118-1135**) a man forcefully pushed his wife. She fell and died. 1500 man from all corners assembled and declared the husband guilty. He also admitted his guilt. He was ordered to provide fine for burning of a lamp in a temple.²

Delay denied the justice –

Meaning of this quotation is that justice should be given in early stage to the aggrieved party or person, because after a long time there is no meaning of justice. That is why plea bargaining was adopted in our criminal justice system. It is a totally new concept for our legal system. However in some western countries, it was used for a long time especially in United state where approximately 90% cases were solved by plea bargaining. It is not only beneficial for the culprit but also beneficial for victim.

On the recommendation of **Malimath Committee**, code of criminal procedure has been amended in 2006 and added chapter- **21(A)** consisting 12 sections (**265A-265L**) and central government notified those offences which affect the socio economic conditions of our country. plea bargaining is not only a theoretical part of law but it is really working.

What is plea bargaining:-

We can't give perfect definition of plea bargaining, plea bargaining involves an active negotiation process where an offender is allowed to confess his guilt before the court (if he so desires) in exchange of a lighter punishment that would have been given for such an offence. Plea bargaining usually occurs prior to trial but may occur any time before a judgment is rendered.

From the point of view of accused it means a lesser sentence for a long expensive trial process of undergoing trial where he may be convicted. Thus it involves an active negotiation process by

² Eqbal Justice M.Y., 'Concept of plea bargaining', Nyaydeep January 2008 p. 51

which the accused offers to exchange a plea of guilty, thereby waiving his right to trial, for some concession in charges or for a sentence reduction.³

Types of plea bargaining: -We can divide the plea bargaining in three categories.⁴

1. Charge Bargaining
2. Sentence Bargaining
3. Fact Bargaining

(i) Charge Bargaining:- In this bargaining defendant pleads guilty to reduce charges. It occurs when defendant pleads guilty to necessarily included offences.

(ii) Sentence Bargaining:- In this bargaining a assurance involves of lighter or alternative sentences in return for a defendant's pleading guilty. In United States, It can only be granted if they are approved by the trial judge. It sometimes occurs in high profile cases. Where the prosecutor does not want to reduce the charges against the accused, usually for fear of how the media will react. A sentence bargain may allow the prosecutor to obtain a conviction to the most serious charge, while assuring the defendants of an acceptable sentence.

(iii) Fact Bargaining:- In this bargaining negotiation involves an admission to certain facts ("Stipulating" to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts.

When Plea Bargaining can be made:- Plea bargaining can be made by an accuse of an offence when⁵

(i) when a police report has been forwarded by the officer in charge of a police station under section 173 Cr.P.C. alleging there in that offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment of life or of imprisonment for a term exceeding seven years, Has been provided under the law for the time being in force or,

³ Pasayat Justice Dr. Arijit, 'Plea bargaining', Nyaydeep July 2007 p. 5

⁴ Indian Socio Legal Journal 2009 vol-35 P.41.

⁵ Section 265A of Cr.P.C.1973.

(ii) A magistrate has taken cognizance of an offence on complaint other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding 7 year, has been provided under the law for the time being in force and after examining complaint and witnesses under section 200 issued the process under section 204.

The person who can file an application for plea bargaining:-⁶

- (i) Any accused whose age is above of 18 years and against whom a trial is pending, can file an application for plea bargaining.
- (ii) The offence against accused should not be punishable more than 7 years.
- (iii) Victim of that offence should not be a woman or a child below the age of 14 years.
- (iv) The accused should not be covered under section 2(k) of juvenile justice (care and protection of children) Act, 2000.
- (v) The accused should be first offender.
- (vi) The offence should not affect the socio economic condition of the country.

These are some offences which affects the socio-economic condition of the country:-⁷

No plea bargaining is allowed in respect of the following offences:

- (i) Provisions of fruit products order 1955 (issued under the essential commodities Act 1955)
- (ii) The immoral traffic (prevention) Act 1956.
- (iii) Dowry prohibition Act 1961.
- (iv) Provisions of meat food products order 1973 (issued under the essential commodities Act 1955)
- (v) The commission of sati prevention Act 1987.
- (vi) The indecent representation of women (prohibition) Act 1986
- (vii) Protection of women from domestic violence Act 2005
- (viii) The infant milk substitutes, feeding bottles and infant foods (Regulation of production supply and Distribution) Act 1992

⁶ Section 265A of Cr.P.C.1973.

⁷ The central government -by S.O.1042 E dated 11thjuly2006.

- (ix) Offence with respect to animals that find place in schedule I and part II of the schedule II as well as offences related to altering of boundaries of protected areas under wild life (protection) Act 1972.
- (x) The SC and ST (prevention of Atrocities) Act 1989
- (xi) Offences mentioned in the protection of civil rights Act 1955.
- (xii) Offences listed in section 23 to 28 of the juvenile justice (care and protection of children) Act 2000.
- (xiii) The Army Act, 1950
- (xiv) The Air force Act, 1950
- (xv) The Navy Act 1957
- (xvi) Offence specified in section 59 to 81 and 83 of the Delhi metro railway (operation and maintenance) Act, 2002
- (xvii) The explosive Act 1884
- (xviii) Offence specified in section 11 to 18 of the cable television Networks (Regulation) Act, 1955.
- (xix) Cinematograph Act 1952 Benefits

Advantages of plea bargaining:-

- (i) The main advantage of plea bargaining, for most of accused or culprits receive a lesser punishment.
- (ii) It saves money and time also.
- (iii) It reduces wastage of time and money of govt. machinery.

Conclusion and suggestion:-

Although it is a totally new concept in our criminal justice system however it is working effectively but unawareness about this provision is the main evil of plea bargaining. So we should –

- (i) Arrange and organize some seminars, workshops, awareness programs about Plea Bargaining.
- (ii) Plea Bargaining should be connected with our socio legal reform system.



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- (iii) Media should spread some awareness programs about Plea Bargaining in our society.
- (iv) Top authorities should keep an eye on implementation of Plea Bargaining very strictly.
- (v) We should start some literacy programs related to Plea Bargaining for the society.
